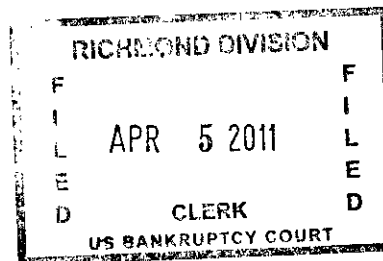


1 TRAINOR FAIRBROOK
2 NANCY HOTCHKISS [SBN 107692]
3 JENNIFER L. PRUSKI [SBN 186141]
4 980 Fulton Avenue
5 Sacramento, California 95825
6 Telephone: (916) 929-7000
7 Facsimile: (916) 929-7111
8 jlp:4455028.898208.1

9 Attorneys for Creditor
10 THE MARVIN L. OATES TRUST



11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF VIRGINIA
13 RICHMOND DIVISION

14 IN RE:

15 CIRCUIT CITY STORES, INC., *et al.*,
16 Debtors.

Chapter 11

Case No. 08-35653-KRH

Jointly Administered

17 **THE MARVIN L. OATES TRUST'S RESPONSE TO**
18 **LIQUIDATING TRUST'S FOURTEENTH OMNIBUS**
19 **OBJECTION TO LANDLORD CLAIMS [Docket #10052]**

20 Creditor The Marvin L. Oates Trust ("Oates") hereby responds to Liquidating Trust's
21 Fourteenth Omnibus Objection to Landlord Claims.

22 1. On November 10, 2008, Circuit City Stores, Inc. ("Debtor") and its related
23 companies filed voluntary petitions for relief under Chapter 11 of the United State Bankruptcy
24 Code.

25 2. Oates timely filed its Proof of Claim no. 7024 for pre-petition rent and leasehold
26 expenses and rejection damages in the amount of \$44,963.02.

27 3. As set forth in Schedule C of the Objection, the Liquidating Trustee proposes to
28 reduce Oates' claims but their reasoning is vague and uncertain.

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TRINOR FAIRBROOK
Attorneys At Law
980 FULTON AVENUE
SACRAMENTO, CALIFORNIA 95825-4558
Telephone: (916) 929-7000
Facsimile: (916) 929-7111

1 a. **\$10,986.51 in Pre-Petition rent:** Paragraph 4 of the Lease, a copy of
2 which is attached to the Proof of Claim filed by Oates¹, provides that Debtor agreed to pay
3 Minimum Rent to Oates, "without deduction, setoff, prior notice of demand" and "in advance, on
4 or before the first day of the month." According to Oates' books, base rent for November 2008
5 remains unpaid. Because of the vague nature of the Liquidating Trustee's objection, it is
6 uncertain how it arrived at its number or the basis upon which the Liquidating Trustee seeks to
7 reduce it. A copy of the tenant ledger for this Debtor is attached hereto as **Exhibit A**.

8 b. **\$1,569.50 in pre-petition late fees:** Paragraph 34.H of the Lease provides
9 that Oates may assess a late charge of 10% on any installment of rent or other sum due from
10 Debtor which is not paid within 10 days. Rent and all other sums were due on the first of the
11 month. Debtor failed to pay November 2008's rent, property taxes, CAM and insurance which
12 totaled \$15,695.01. Ten percent of that amount is \$1,569.50. The late charge was properly
13 assessed pursuant to the Lease.

14 c. **\$2,184.44 for pro-rata share of a leasing commission:** Paragraph
15 23.B(4) of the Lease allows Oates to recover from Debtor "any other amount, and court costs,
16 necessary to compensate Landlord for all detriment proximately caused by Tenant's default."
17 The filing for bankruptcy relief is a default under the Lease. (Lease, ¶ 22.D.) Moreover,
18 California Civil Code section 1951.2 provides:

19 (a) Except as otherwise provided in Section 1951.4, if a lessee of
20 real property breaches the lease and abandons the property before
21 the end of the term or if his right to possession is terminated by the
22 lessor because of a breach of the lease, the lease terminates. Upon
23 such termination, the lessor may recover from the lessee:

24 . . .

25 (4) Any other amount necessary to compensate the lessor for all
26 the detriment proximately caused by the lessee's failure to perform
27 his obligations under the lease or which in the ordinary course of
28 things would be likely to result therefrom.

26 After Debtor vacated, Oates was able to very quickly locate a replacement tenant for the Premises
27 when Debtor vacated. Oates seeks recovery of the pro-rata share of a leasing commission for the

28 ¹ Should the Court, Debtor or any other party request a copy of the Lease, it will be provided.

1 replacement tenant in the amount of \$2,184.44 (\$6,865.38 x 7/22). However, in obtaining the
2 replacement tenant, Oates was forced to incur a leasing commission which it would otherwise not
3 incur had Debtor not vacated and defaulted. The amount of the leasing commission was pro-rated
4 and is properly recoverable under the Lease and California Civil Code 1951.2(a)(4).

5 4. The foregoing averments are based upon the personal knowledge of the following
6 individual:

7 Janet Hart
8 Oates Investment Company
9 960 Fulton Avenue
Sacramento, California 95825
(916) 489-6400

10 Ms. Hart's declaration is attached hereto.

11 5. Pursuant to this Court's Order Establishing Omnibus Objection Procedures and
12 Approving the Form and Manner of Notice of Omnibus Objection ("Order"), Oates will provide
13 such additional documentation as it may have upon request.

14 6. Pursuant to the Order, Oates' notice address is identical with the address of the
15 undersigned counsel.

16 WHEREFORE, Creditor The Marvin L. Oates Trust requests that the Court have and
17 consider Claim No. 7024, that the Court determine that this Creditor is entitled to their claim in
18 full; that the Objection of the Trustee in this regard be denied in its entirety or in the alternative,
19 be found to confirm the amount of the claim as presented by this Creditor; and that this Creditor
20 be granted any additional relief to which it may be entitled.

21 Dated: April 5, 2011

TRAINOR FAIRBROOK

22
23 By: /s/ Jennifer L. Pruski
24 JENNIFER L. PRUSKI

25 Attorney for Creditor
26 The Marvin L. Oates Trust
27 980 Fulton Avenue
28 Sacramento, California 95825
Telephone: (916) 929-7000
Facsimile: (916) 929-7111
Email: jpruski@trainorfairbrook.com

1 **DECLARATION OF JOAN HART**

2 I, Joan Hart, declare:

3 I am the property manager for The Marvin L. Oates Trust. As to the matters set forth
4 herein, if called upon testify, I could and would competently testify thereto, for I know the
5 matters to be true of my own personal knowledge or my review of the billing records related to
6 this matter which are kept in the ordinary course of business.

7 I have read this Response, reviewed the attachment thereto and reviewed The Marvin L.
8 Oates Trust's books. I attest that the rent, late charge and leasing commission discussed herein
9 specifically relate to Circuit City's occupation of the premises, subsequent default and vacation of
10 the premises.

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct. Executed on April 5, 2011 in Sacramento, California.

13
14 /s/ Joan Hart

15 Joan Hart
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TRINOR FAIRBROOK
Attorneys at Law
980 FULTON AVENUE
SACRAMENTO, CALIFORNIA 95825-4558
Telephone: (916) 929-7000
Facsimile: (916) 929-7111

EXHIBIT A

Owner: Investments, Inc.

Tenant Ledger

From date 09/01/2008 to 12/31/2008
Compare date range to Charge Date

Charge Date	Payment Date	Charge Type	Description	Reference ID	Apply Description	Charges	Payments	Adjustments	Open Amount
September Totals									
09/01/08	09/01/08	ESTCAM	Est. CAM	CHK: 4562446		630.00	630.00-		.00*
09/01/08	09/01/08	ESTCAM	Est. CAM Payment	CHK: 4562446					
09/01/08	09/01/08	ESTINS	Est. Insurance	CHK: 4562446		212.00	212.00-		
09/01/08	09/01/08	ESTINS	Est. Insurance Payment	CHK: 4562446					
09/01/08	09/01/08	ESTTAX	Est. Taxes	CHK: 4562446		1,212.00	1,212.00-		
09/01/08	09/01/08	ESTTAX	Est. Property Tax Payment	CHK: 4562446					
09/01/08	09/01/08	RENT	Base Rent	CHK: 4562446		13,641.01	13,641.01-		
09/01/08	09/01/08	RENT	Rent Payment	CHK: 4562446					
September Totals									
10/01/08	09/30/08	ESTCAM	Est. CAM	CHK: 4562446		630.00	630.00-		.00*
10/01/08	09/30/08	ESTCAM	Est. CAM Payment	CHK: 4562446					
10/01/08	09/30/08	ESTINS	Est. Insurance	CHK: 4562446		212.00	212.00-		
10/01/08	09/30/08	ESTINS	Est. Insurance Payment	CHK: 4562446					
10/01/08	09/30/08	ESTTAX	Est. Taxes	CHK: 4562446		1,212.00	1,212.00-		
10/01/08	09/30/08	ESTTAX	Est. Property Tax Payment	CHK: 4562446					
10/01/08	09/30/08	RENT	Base Rent	CHK: 4562446		13,641.01	13,641.01-		
10/01/08	09/30/08	RENT	Rent Payment	CHK: 4562446					
October Totals									
11/01/08	10/31/08	ESTCAM	Est. CAM	CHK: 4562446		630.00	630.00-		.00*
11/01/08	10/31/08	ESTCAM	Est. CAM Payment	CHK: 4562446					
11/01/08	10/31/08	ESTINS	Est. Insurance	CHK: 4562446		212.00	212.00-		
11/01/08	10/31/08	ESTINS	Est. Insurance Payment	CHK: 4562446					
11/01/08	10/31/08	ESTTAX	Est. Taxes	CHK: 4562446		1,212.00	1,212.00-		
11/01/08	10/31/08	ESTTAX	Est. Property Tax Payment	CHK: 4562446					
11/01/08	10/31/08	RENT	Base Rent	CHK: 4562446		13,641.01	13,641.01-		
11/01/08	10/31/08	RENT	Rent Payment	CHK: 4562446					
November Totals									
12/01/08	11/30/08	ESTCAM	Est. CAM	CHK: 4562446		630.00	630.00-		.00*
12/01/08	11/30/08	ESTCAM	Est. CAM Payment	CHK: 4562446					
12/01/08	11/30/08	ESTINS	Est. Insurance	CHK: 4562446		212.00	212.00-		
12/01/08	11/30/08	ESTINS	Est. Insurance Payment	CHK: 4562446					
12/01/08	11/30/08	ESTTAX	Est. Taxes	CHK: 4562446		1,212.00	1,212.00-		
12/01/08	11/30/08	ESTTAX	Est. Property Tax Payment	CHK: 4562446					
12/01/08	11/30/08	RENT	Base Rent	CHK: 4562446		13,641.01	13,641.01-		
12/01/08	11/30/08	RENT	Rent Payment	CHK: 4562446					
December Totals									
12/01/08	11/30/08	ESTCAM	Est. CAM	CHK: 4562446		630.00	630.00-		.00*
12/01/08	11/30/08	ESTCAM	Est. CAM Payment	CHK: 4562446					
12/01/08	11/30/08	ESTINS	Est. Insurance	CHK: 4562446		212.00	212.00-		
12/01/08	11/30/08	ESTINS	Est. Insurance Payment	CHK: 4562446					
12/01/08	11/30/08	ESTTAX	Est. Taxes	CHK: 4562446		1,212.00	1,212.00-		
12/01/08	11/30/08	ESTTAX	Est. Property Tax Payment	CHK: 4562446					
12/01/08	11/30/08	RENT	Base Rent	CHK: 4562446		13,641.01	13,641.01-		
12/01/08	11/30/08	RENT	Rent Payment	CHK: 4562446					
Tenant Total									
64,144.14*	31,390.02*	32,754.12*							.00*
Applied	Forfeited	Refunded	Balance						
.00	.30	.00	.00						

PROOF OF SERVICE

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 980 Fulton Avenue, Sacramento, California 95825-4558. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On April 5, 2011, I placed a true and correct copy of the within documents:

**THE MARVIN L. OATES TRUST'S RESPONSE TO
LIQUIDATING TRUST'S FOURTEENTH OMNIBUS
OBJECTION TO LANDLORD CLAIMS [Docket #10052]**

in a sealed envelope, postage fully paid, addressed as follows:


Jeffrey N. Pomerantz, Esquire
Andrew W. Caine, Esquire
(admitted *pro hac vice*)
Pachulski Stang Siehl & Jones, LLP
10100 Santa Monica Boulevard
Los Angeles, California 90067-4100

Lynn L. Tavenner, Esquire
Paula S. Beran, Esquire
Tavenner & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 5, 2011, at Sacramento, California.


Sandra Morris

TRINOR FAIRBROOK
Attorneys At Law
980 FULTON AVENUE
SACRAMENTO, CALIFORNIA 95825-4558
Telephone: (916) 929-7000
Facsimile: (916) 929-7111